

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-303 (Sub-No. 29X)

WISCONSIN CENTRAL LTD.–ABANDONMENT EXEMPTION–IN FOREST COUNTY, WI

Decided: November 10, 2005

Wisconsin Central Ltd. (WCL) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 4.62-mile line of railroad, from milepost 235.84 on the Pembine Sub (formerly milepost 249.38 on the old Shawano Sub), near Crandon, to the end of the track at milepost 231.22 on the Pembine Sub (formerly milepost 254.00 on the old Shawano Sub), in Forest County, WI. Notice of the exemption was served and published in the Federal Register on October 13, 2005 (70 FR 59802-03). The exemption is scheduled to become effective on November 12, 2005.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in the proceeding on October 18, 2005, setting forth environmental concerns and recommending that conditions be imposed on any decision granting abandonment authority. In the EA, SEA notes that the Wisconsin Department of Natural Resources (WisDNR) has indicated that the proposed rail abandonment would be suitable for a Rails-to-Trails conversion. In addition, SEA notes that the Wisconsin Department of Transportation (WisDOT) expressed interest in the corridor for trail use, commenting that preservation of the corridor would be consistent with existing land use plans. WisDOT comments also addressed salvage of the line. WisDOT states that the railroad is required to comply with its Abandoned Railroad Line Salvage and Clean-up Policy/Standards/Procedures. Also, the railroad is required to protect all surveying benchmarks, monumentation and mapping information; remove rail ties and ballast at the crossings of state highways; restore state highways at abandoned crossings; and coordinate highway crossing activities with WisDOT. In addition, the railroad must coordinate with the appropriate agencies, and obtain a permit from the District Maintenance Section for work on the highway right-of-way. SEA therefore recommends that the railroad consult with WisDOT prior to commencement of any salvage activities.

SEA also notes in the EA that the U.S. Fish and Wildlife Service (USFWS) has determined that, while the proposed abandonment is not likely to have an adverse impact on any Federally listed species, or adversely modify any areas designated as critical habitats, the project is adjacent to extensive natural areas, including a large deciduous forest and wetlands. Over time, it notes, species and/or habitats at or near the project site may become eligible for Federal listing. USFWS indicates that the species and critical habitat lists are updated every 6 months. Given the time lag between abandonment and salvage activities, USFWS is requesting that the railroad provide advance notice of salvage operations in accordance with section 7 of the

Endangered Species Act. SEA therefore recommends that the railroad consult with USFWS prior to the commencement of any salvage activities.

SEA further notes in the EA that the U.S. Environmental Protection Agency (USEPA) and WisDNR have expressed concern regarding the impact of water quality and whether the proposed abandonment is consistent with applicable Federal, state, or local water quality standards. USEPA requested that waste and debris be properly disposed of, and that soil disturbance be minimized to the greatest extent possible during salvage operations. WisDNR commented that the corridor crosses Swamp Creek, a class II trout stream, and two unnamed tributaries. The treatment of these crossings, as well as possible culverts in wetland areas, will depend on the final alternative use of the rail line. WisDNR noted that, if the right-of-way is not ultimately used as a public recreational trail, the removal of culverts may be required. Further, if salvage operations take place on the Swamp Creek crossing or banks of the creek, timing restrictions may be imposed to protect the trout populations in these waters during the spawning period. WisDNR stated that the removal of track and ties should not affect any designated wetlands as they currently exist. However, original construction of the roadbed resulted in the filling of wetlands along the corridor. Original drainage patterns were also altered, resulting in changes to the local hydrology. If, following abandonment, future use of the right-of-way is not for transportation or trail purposes, WisDNR recommends that all fills be removed and original contours and vegetation be reestablished. Any work in wetlands during this time may require permits. WisDNR noted that all waste and demolition material that cannot be recycled must be disposed of in an appropriate manner. Disposal of any materials in wetlands or surface waters is not permitted. WisDNR recommends that the railroad prepare a waste plan describing the disposal method and location of all waste and demolition material, and that a sediment and erosion plan be submitted at least 2 weeks prior to the start of salvage operations. Finally, WisDNR would like to conduct two field evaluations, one prior to salvage operations and the other following salvage. Based on these extensive comments, SEA recommends that the railroad consult with WisDNR prior to the start of salvage activities.

SEA notes that the U.S. Army Corps of Engineers (Corps) found the proposed abandonment not to be subject to the permit requirements of section 404 of the Clean Water Act, as no work will be performed in waters of the United States, and no dredged or fill material will be discharged into any waters of the United States. However, any contemplated design changes would necessitate further consultation. This could include the removal of stream culverts, should the trail conversion not occur. SEA therefore recommends that the railroad consult with the Corps prior to commencement of any salvage activities to determine the applicability and need for permits.

SEA has determined that the Wisconsin Historical Society, Division of Historic Preservation, Office of Preservation Planning (SHPO), has not completed its evaluation of the potential impact of this project on historic resources. Accordingly, SEA recommends that WCL retain its interest in and take no steps to alter the historic integrity of all sites and structures on

the line until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

Comments to the EA were due November 2, 2005. By letter dated November 2, 2005, WisDNR submitted additional comments, indicating that the railroad should protect waterways and wetlands during salvage activities by installing best management practices in accordance with state and Federal stormwater standards in any area where there is a disturbance. WisDNR also requested further clarification on the actual width of the right-of-way, the legal status within the right-of-way, whether easements were granted for town roads and driveways at-grade within the right-of-way, and where the abandonment will terminate in relation to Highway 8. Lastly, WisDNR notes that it will need to comply the Wisconsin Environmental Policy Act before the corridor can be obtained by the State. SEA believes that the conditions above address the first comment regarding best management practices. In response to the remaining comments, SEA recommends that WCL contact WisDNR prior to commencement of any salvage activities.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption for the abandonment of the line described above covered by the notice served and published in the Federal Register on October 13, 2005, is subject to the conditions that WCL shall: (1) consult with WisDOT regarding salvaging and abandonment procedures prior to commencement of any salvage activities; (2) consult with USFWS prior to commencement of any salvage activities regarding potential impacts from salvaging activities to critical habitats and/or Federally listed threatened and endangered species that may occur in the vicinity of the line; (3) contact USEPA and WisDNR prior to commencement of any salvage activities on the project concerning removal and salvage methods; final disposition of crossties preserved with creosote; procedures for storing and fueling of removal equipment; waste management; recycling; procedures for the prevention and/or control of spills; sediment and erosion controls; stormwater runoff mitigation practices; and temporal restrictions in class II waterways during the fish spawning period; (4) consult with the Corps to determine whether a Corps permit under section 404 of the Clean Water Act is required, prior to the commencement of any salvage activities; (5) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are eligible for listing or are listed in the National Register of Historic Places until completion of the section 106 process of the NHPA. The railroad shall report back to SEA regarding the results of any consultations with the SHPO; and (6) contact WisDNR regarding the legal status of at-grade road crossings, the actual width of the right-of-way, the status of easements for town roads and driveways at-grade within the right-of-way, and the precise location of the abandonment with regard to Highway 8.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary